



EXHIBIT 1

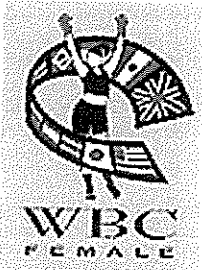




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- ✦ Latest Results
- ✦ Boxing Season
- ✦ Current Champions
- ✦ Press Releases
- ✦ Sulaiman's Tribune
- ✦ WBC FEMALE
- ✦ WBC INTERNATIONAL CHAMPIONSHIP
- ✦ WBC FANS: LETTERS AND PICTURES
- ✦ Welcome by the President
- ✦ Organization Chart
- ✦ History & Founding Fathers
- ✦ Constitution, Rules and Regulations
- ✦ Accomplishments that have Changed the World of Boxing
- ✦ Convention Sites
- ✦ Hall of Fame
- ✦ Championship Fights Statistics
- ✦ Brister's newsletter
- ✦ Photo Gallery
- ✦ Downloads

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This December 20: RAHMAN WILL RECEIVE HIS BELT IN CANCUN

On December 20 in the paradisiacal Cancun, the World Boxing Council will present Hasim Rahman with the championship belt as the undisputed world heavyweight champion of the WBC, after Vitali Klitschko's retirement due to an injury he suffered a week before their title bout.


At the same time, the WBC has designated Vitali Klitschko as World WBC Champion Emeritus in recognition of his unquestionable loyalty and his transparent extraordinary boxing career; also for having brought great prestige and honor to the heavyweight division and for possessing a record of 35-2-0 with an incredible percentage of 97.1 in victories by KO.

The WBC World Champion Emeritus automatically becomes the Ambassador for Peace and Good Will in the World through sports.

With this nomination Vitali Klitschko will also keep the right to return to the boxing arenas as immediate mandatory official challenger if someday he would wish to come back to professional boxing, instead of retiring definitively.

Other very special guests will be present at the ceremony on December 20; their names will be disclosed once their attendance is confirmed.

top ▲



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
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EXHIBIT 2

MARK A. KIRKORSKY, P.C.
Attorneys at Law
4025 South McClintock Drive, Suite 208
Tempe, Arizona 85282
(480) 603-4088
Facsimile (480) 603-4093

Mark A. Kirkorsky
Admitted in Arizona
and California
mark@maklaw.net

February 1, 2007

Via email gpenagaricano@wbcboxing.com
Gabriel A. Penagaricano, Esq.
WBC Secretary General

Via email attylen@yahoo.com
Robert J.B. Lenhardt, Esq.
WBC General Counsel

Via email sulijos@gmail.com sulijos@gmail
Mr. Jose Sulaiman
WBC President

Re: Compulsory Mediation and Arbitration

Gentlemen:

In compliance with the Order issued by the WBC on January 31, 2007 pursuant to Rule 5.3 of the Rules and Regulations of the WBC, my clients confirmed in writing their intention to participate in the **compulsory** mediation process prior to the close of business on January 31, 2007. In two separate communications we requested verification that all parties to the mandated mediation had likewise complied with the Order of the WBC. As of this time, I have yet to receive such confirmation which is disconcerting as it would tend to indicate that all parties have not so responded.

A failure to comply with a direct Order issued by the WBC, and a failure to participate in good faith in the mediation process, as **mandated** by Rules 5.3 and 5.3(f), is a direct violation of the Rules and Regulations. The Rules and Regulations mandate a step-by-step process. A condition precedent to compulsory mediation under Rule 5.3, is the administrative review process set forth in Rule 5.2, which was completed by the WBC as set forth in its January 31, 2007 letter to the parties. Likewise, a condition precedent to the mandatory arbitration process under Rule 5.4, is good faith participation in the compulsory mediation process required by Rule 5.3. The words "**compulsory**" and "**mandatory**" have meaning here. These are not voluntary processes, but rather are necessary components of the progression.

February 1, 2007

Page 2

It has come to our attention that Mr. Klitschko and his representatives did, in fact, comply with the WBC's Order and did provide written confirmation of their intention to participate in the mediation in good faith. In the event that Mr. Peter and his representatives have failed to so comply, then it is our position that the WBC must hold them in violation of the Rules and Regulations of the WBC and further must hold them in contempt of the WBC's clear Order of January 31, 2007.

It should be emphasized that pursuant to Rules 5.1 and 5.5, these Rules and Regulations clearly and unequivocally provide the **exclusive remedies** to "any boxer, promoter, manager, or other person or organization that participates in the activities or events of the WBC, or who avail themselves, or claim any right arising on the WBC Constitution or these Rules and Regulations."

The bottom line is clearly that no party to this matter has the right or option to side-step or violate these Rules and Regulations. As such, in the event that the WBC did not receive written confirmation from Mr. Peter and/or his representatives of their intention to participate **in good faith** in the **compulsory** mediation by the mandated deadline, then they must necessarily be held in violation of the Rules and Regulations and the Order of the WBC. If the Rules and Regulations of the WBC are not going to be enforced, then what is the point of having them. Moreover, a failure to enforce the Rules and Regulations sets a dangerous precedent.

In such instance and based upon the premise that no written confirmation was received, my clients believe it is incumbent upon the WBC to redress any such violation as follows:

1. The WBC should declare Mr. Peter in violation of Rule 5.3 and Rule 5.3(f), thereby forfeiting his right to proceed under Rule 5.4, as a result of his failure to satisfy the condition precedent set forth in Rule 5.3;
2. The WBC should drop Mr. Peter from its rankings as a result of his refusal to abide by its Rules and Regulations; and
3. The WBC should immediately sanction a championship title bout between Oleg Maskaev and Vitali Klitschko.

I look forward to your timely response.

Very truly yours,
MARK A. KIRKORSKY, P.C.

Mark Kirkorsky

Mark Kirkorsky

cc: Dennis Rappaport Productions, Ltd.
Mr. Oleg Maskaev
Mr. Fred Kesch

EXHIBIT 3

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLEG MASKAEV and DENNIS
RAPPAPORT PRODUCTIONS, LTD.,

Plaintiffs,

v.

07 CV 3147 (DAB)

WORLD BOXING COUNCIL and
SAMUEL PETER,

Defendants.

New York, N.Y.
April 19, 2007
2:50 p.m.

Before:

HON. DEBORAH A. BATTS

District Judge

APPEARANCES

PROFETA & EISENSTEIN

Attorneys for Plaintiffs

BY: JETHRO M. EISENSTEIN

ROBERT LENHARDT (Via Telephone)

Attorney for Defendant World Boxing Council

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Attorneys for Defendant Samuel Peter

BY: JEREMY A. COHEN

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2

1 (Case called)

2 THE COURT: The Court has had an opportunity to review
3 briefly the papers submitted by the plaintiff, so I imagine
4 that the first thing I should do is give the defendants an
5 opportunity to say what they would like to.

6 Would it be appropriate for Mr. Lenhardt to go first
7 or Mr. Cohen?

8 MR. COHEN: I am happy to start.

9 THE COURT: Mr. Cohen is going first.

10 MR. COHEN: There are really a couple of points that
11 dispose of this, the TRO. Maybe this does make it out of
12 order. Mr. Lenhardt is prepared to speak about the
13 administrative remedies at issue which the deputy has raised in
14 our phone call.

15 In addition, there is a real serious question of
16 delay. This is truly an eleventh hour motion. The purse bid
17 is supposed to take place tomorrow. It is something that
18 plaintiffs were aware of as early as April 9, which is over a
19 week ago. They wait until today, when the purse bid is
20 supposed to take place tomorrow in Mexico City and people have
21 made plans to get down there. This is an eleventh hour filing.
22 They could have made the motion seven days ago.

23 In any event, on the law, on the merits of the
24 application for a TRO, as your Honor is I'm sure aware, the
25 standards are the same for a TRO or a preliminary injunction --

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1 show irreparable harm, likelihood of success or, in the
2 alternative, serious questions to the merits or some sort of
3 showing of hardship.

4 There is no irreparable harm. This is a money
5 dispute. They're concerned about the division of proceeds from
6 a purse offer. The offer is going to be what it is, some
7 number, and it is going to be divided amongst the boxers
8 according to a percentage set by the WBC under the WBC rules.
9 So whether that takes place or not, it is still a question of
10 how the proceeds would be divided. So a bid could come in,
11 say, for example, a million dollars. As it currently stands,
12 55 percent goes to Mr. Maskaev and 45 percent to Mr. Peter. If
13 they want to pursue their claim, they can still do it. And all
14 that is going to change is the percentages -- 30 percent would
15 then go to my client, 70 percent to Mr. Maskaev. So it is just
16 a money issue. There is no irreparable harm.

17 As to the merits, the WBC rules govern the purse bid
18 and I know that they are attached to the exhibit and I have a
19 copy if your Honor would like.

20 THE COURT: I have a copy. Thank you.

21 MR. COHEN: They could hardly be clearer. I would
22 address your Honor to Section 2, at least on my copy it begins
23 on page 12.

24 THE COURT: All right.

25 MR. COHEN: You will see Rule 2, purse offer

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1 procedures, paragraph 2.3 refers to the free negotiation
2 period, and that's what we are concerned with here. And what
3 it says is typically 30 days for the free negotiation period,
4 however, the bottom paragraph in Section 2.3 says, "Upon
5 special circumstances the president of the WBC or the secretary
6 general, in the exercise of their discretion, may shorten or
7 lengthen the 30-day free negotiation period," and that's
8 exactly what happened here.

9 There is a long back story that is not captured.

10 THE COURT: In other words, that would meet the
11 special circumstances that would make this particular paragraph
12 applicable?

13 MR. COHEN: Absolutely. And special circumstances is
14 not defined, the key is, the WBC has the discretion. There is
15 a long back story, some of which may be captured in the
16 exhibits to the plaintiffs' submission. Although I didn't have
17 a chance to look through them. I only got them today when I
18 came into the courtroom.

19 In short, this is a process that goes back, really, to
20 September of last year and then was resurrected again in
21 January of this year when Mr. Peter won what is called an
22 elimination bout under WBC rules that gave him a right to fight
23 Mr. Maskaev for the heavyweight title, and since that time, Mr.
24 Maskaev has done everything possible to avoid fighting Mr.
25 Peter, tried to delay it, fight other fighters and, finally,

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1 there was a resolution as to who Mr. Maskaeve has to fight next,
2 but now seeks to delay it.

3 But it is certainly no surprise to Mr. Maskaeve and to
4 his promoter Dennis Rappaport that he is now fighting
5 Mr. Peter. He has had plenty of time to prepare his options
6 and giving him two weeks to negotiate a deal is not, under the
7 circumstances, operating a hardship, and it is clearly within
8 the discretion of paragraph 2.3.

9 In addition, the complaint or perhaps in the brief
10 that was provided along with the complaint, plaintiffs have
11 said that it is actually a 45-day period, that is, there is a
12 30-day period and the purse offer happens after that, after the
13 15 days. In fact, it is not always. The rule says, Section
14 2.4, what it actually says, about the fourth line down, it says
15 that the purse offer must be held within 15 calendar days from
16 the date of the expiration of the negotiation period. It
17 doesn't say after 15 days. It says it has to be within 15
18 days. It could be the next day. It could be anything up to 15
19 days. It is not a 45-day rule, so that is just wrong.

20 THE COURT: Would you say that what you just read,
21 that it must be held within 15 calendar days from the date of
22 expiration of the 30-day free negotiation period would not
23 encompass 45 days altogether?

24 MR. COHEN: It could, but the position staked out in
25 their papers is that it has to be at least 45 days, in other

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1 words, 30 days for the open negotiations and the purse offer
2 will not be held for another 15 days. And that's not what the
3 rules say. It says that you have a negotiation period of 30
4 days. And then 2.4 affirms, "unless such period is reduced or
5 extended by the president at his discretion." And so after the
6 open negotiation period and the purse offer has to take place
7 within 15 days, not no earlier than 15 days, within that 15-day
8 period. And that's what we have happening, the purse offer is
9 happening the day after the period expires.

10 THE COURT: When was the announcement? Fill me in
11 with some dates.

12 MR. COHEN: The announcement was April 9 that the
13 purse offer would take place on April 20. So in fact the
14 announcement was made April 9, and then you have from noon,
15 April 9, until April 20 for open negotiations.

16 THE COURT: So that would reduce the 30-day period by
17 quite a bit.

18 MR. COHEN: Ten days.

19 As I said, there is a long, long back story here. The
20 parties were negotiating various permutations of who would
21 fight who, when, and for what price. There was certainly no
22 surprise to Mr. Rappaport who, in large part, caused the delay.

23 It is also my understanding that, even during this
24 10-day period starting April 9 and it expires tomorrow, that
25 Mr. Rappaport has not engaged in any meaningful negotiations,

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1 despite our attempts to do so, despite the promoter for Samuel
2 Peter attempting to engage in those negotiations.

3 THE COURT: Let me see if I understand the math here,
4 Mr. Cohen. So the 30-day period was shortened to a 10-day
5 period, and then the up to 15-day period has disappeared and so
6 the one day --

7 MR. COHEN: The day after --

8 Sorry to interrupt.

9 THE COURT: So we have one day instead of 15 and he
10 got 10 days instead of 30?

11 MR. COHEN: Except that the 15 days is just an end
12 point.

13 THE COURT: I understand. But he could have 15 days.
14 Just for the sake of argument, I am comparing one day with 15
15 days. I am comparing 10 days with 30 days.

16 I know that you have not gone into the special
17 circumstances, and if necessary I will ask you to do that. I
18 just want to make sure that I have the complete picture.

19 MR. COHEN: I don't actually think that is the
20 complete picture. It is the complete picture as far as the
21 math goes, but there is a long history.

22 Samuel Peter fought a boxer by the name of James Toney
23 in September of 2006 in what was called an elimination bout and
24 what that means, under WBC rules, is the winner gets to fight
25 the champion, Mr. Maskaev. It was a close decision that

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1 Mr. Peter won to fight Mr. Maskaev. The WBC instead ordered a
2 rematch because it was a close fight, so Mr. Peter and
3 Mr. Toney fought again in January of this year. Mr. Peter won
4 again the right to fight Mr. Maskaev. In the meantime,
5 Mr. Maskaev didn't want to sit idly by waiting for the second
6 fight, sought permission to fight an interim fight against an
7 opponent that he picked.

8 THE COURT: Against who?

9 MR. COHEN: That Mr. Maskaev picked.

10 What was interesting about that fight was that it was
11 subject to a condition imposed by the WBC and agreed upon by
12 Mr. Maskaev and Mr. Rappaport that, if Maskaev won that interim
13 fight, the next fight would be against the winner of the second
14 Peter/Toney fight, and Rappaport made statements to the press
15 to that effect, that his next fight would be against the winner
16 of the Peter/Toney fight.

17 Lo and behold, Peter wins again. We seek to open
18 negotiations. They don't want to negotiate. They want to
19 fight a different fighter by the name of Vitali Klitschko who
20 retired but was seeking to return, and that became the subject
21 of a dispute that involved Mr. Maskaev, Mr. Klitschko, the WBC,
22 who you have on the phone.

23 All four parties worked very hard to negotiate a
24 solution to that, very hard. And at the last minute,
25 Mr. Maskaev, Mr. Rappaport walked away from what everyone

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1 believed was a reasonable settlement, walked away, forced the
2 parties to go back and try to come up with another solution.

3 All the while plaintiffs were promising to pay
4 millions of dollars to our client to allow Maskaeve to fight
5 another fight. Ultimately, they couldn't deliver. They didn't
6 have the money. They didn't have the fight against Klitschko,
7 couldn't get a date or venue. They couldn't do the fight they
8 wanted to do, and they came back to us and said, OK, now we
9 have to fight you. And that is, in very short order, how we
10 got to where we are.

11 THE COURT: So those are the special circumstances,
12 otherwise known as complete aggravation with the plaintiff?

13 MR. COHEN: That is a nice way --

14 THE COURT: I am not making that as a serious comment,
15 but I certainly understand with all of the back and forth that
16 it might indeed get into the paragraph that starts out with
17 under "special circumstances."

18 MR. COHEN: It is more than just aggravation, because
19 there has been some severe harm to Mr. Peter. That harm has
20 come in the form of loss of TV opportunities, loss of venue
21 opportunities. Samuel Peters, by all rights, should have been
22 fighting for the WBC heavyweight championship sometime not long
23 after September of '06. And then due to circumstances, not
24 long after January of '07. Here we are in April and we still
25 can't get a fight and that's what this has all been about,

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1 trying to get a fight. A recent press statement said that we
2 wasted a lot of time. That's the special circumstances.

3 THE DEPUTY CLERK: Mr. Lenhardt?

4 I think that we have lost Mr. Lenhardt.

5 THE COURT: Where is he physically?

6 MR. EISENSTEIN: Dallas, Texas.

7 THE DEPUTY CLERK: Mr. Lenhardt, I am going to put you
8 on speaker right now.

9 MR. LENHARDT: I can barely hear you. There is a loud
10 buzzing noise.

11 I don't want to hold up the proceedings.

12 THE DEPUTY CLERK: I am going to ask you to hold one
13 more time.

14 MR. LENHARDT: Yes, sir.

15 THE DEPUTY CLERK: Mr. Lenhardt, can you hear us now?

16 MR. LENHARDT: Very well. Thank you.

17 THE COURT: I am not exactly sure at what point we
18 lost you. Could you sort of tell us, perhaps, the last thought
19 that you heard or the last argument you heard and we will try
20 to bring you up to speed.

21 MR. LENHARDT: Your Honor, I apologize. I don't think
22 that I heard any of the arguments. I heard just Mr. Delaney's
23 comments, and then we faded out. I believe I already know the
24 arguments that are being made, but I apologize, I didn't hear
25 any.

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1 THE COURT: Fortunately, Mr. Cohen is doing an
2 excellent job setting forth the position on the merits and we
3 were at the point where I actually did make him go into what
4 the special circumstances were that would call into play the
5 third paragraph under 2.3 on page 12 of the WBC rules, and he
6 did that.

7 If you will continue, Mr. Cohen.

8 MR. COHEN: Thank you, your Honor.

9 THE COURT: If you will continue slowly.

10 MR. COHEN: To just sort of close the loop on that
11 thought, as I said before, it is more than just aggravation,
12 there has been real harm caused by the delay, losing these
13 opportunities. And so, again, just to underscore, it is more
14 than just frustration with how the negotiations have gone.

15 The second point I would make as to the merits, I
16 refer your Honor to Section 2.12 at page 14 of the WBC rules.
17 And it sets forth the purse list for a championship fight. And
18 you will see in the typical ordinary course, subparagraph A, 70
19 percent for the champion and 30 percent for the challenger.

20 But I refer your Honor to subparagraph D:
21 "Notwithstanding the terms of subparagraphs A, B and C above
22 the board of governors may, in its discretion and by a majority
23 vote, modify the division of purse offer proceeds between
24 boxers and a purse offer in unusual or special cases, like the
25 consideration of the outstanding marketing value of one of the

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1 boxers. The modification of the split will be limited to three
2 categories, 70/30, 60/40 and 55/45 for the champion and
3 challenger respectively."

4 Then that is something WBC is clearly entitled to do
5 in its discretion, and that's what they have done and that's
6 what they are entitled to do. Again, the same sorts of special
7 circumstances would entitle WBC to invoke its discretion to do
8 that.

9 And that's really it as to the merits. Those two
10 provisions or, really, three provisions -- 2.3, 2.42 and
11 2.12 -- give the WBC the discretion to do exactly what it did.
12 And there's really no complaint that plaintiffs can make. They
13 agreed to abide by these rules. It is the overarching premise
14 of Mr. Maskaev's career, to abide by these rules. He is the
15 WBC champion, and the trade-offs of being able to fight for the
16 WBC championship is to abide by their rules.

17 I think at this point it is probably a good time to
18 turn it over to Mr. Lenhardt who, I believe, is going to
19 address the administrative remedies.

20 THE COURT: 5.1, et al?

21 MR. COHEN: I believe that's right, yes.

22 THE COURT: Mr. Lenhardt.

23 MR. LENHARDT: Exactly right.

24 One of the issues here, your Honor, is that the WBC
25 rules and regulations, to which all parties are required to

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1 agree in terms of doing business with the WBC, fighting for or
2 holding any of our championships, are the exclusive alternate
3 dispute mechanisms and regulations in Rule 5.

4 You will see, if you have a copy in front of you, Rule
5 5.1 talks about the exclusivity of remedies and the dispute
6 procedures provided for herein. Section 5.2 requires any party
7 within 15 days of having a dispute with the WBC to submit it in
8 writing to the WBC.

9 No claim was made by the Maskaev camp for relief prior
10 to the communication that we had by telephone yesterday in
11 terms of postponing the first bid or making any specific
12 requests to appeal the decision of the board of governors to
13 change the purse split from the 70/30 to the 55/45 that is
14 permitted under the WBC rules.

15 Rule 5.3 requires compulsory mediation if the
16 aggrieved party is not satisfied with the resolution of the WBC
17 administrative procedures.

18 And if that is not successful, then Rule 5.4 requires
19 mandatory arbitration before the court of arbitration for sport
20 and, again, none of these procedures have been followed by the
21 Maskaev camp with respect to the matters being complained about
22 today.

23 Rule 5.5 says that any person having a claim against
24 the WBC waives all other remedies and causes of actions
25 provided for herein.

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1 So your Honor, we believe that the request before your
2 court, without having followed these mandatory alternate
3 dispute resolution procedures, is flawed.

4 THE COURT: All right. Anything else that you would
5 like to say, Mr. Lenhardt, before I give Mr. Eisenstein an
6 opportunity to respond both to Mr. Cohen and to you?

7 MR. LENHARDT: First, I do apologize that I was not
8 able to be present or have other counsel.

9 I have a letter from another attorney, Mark Kirkorsky
10 of Tempe, Arizona dated February 1, 2007 on behalf of the
11 champion Maskaev and his promoter Dennis Rappaport, and if I
12 may, I would like for the Court to hear the statements therein.

13 THE COURT: What was the date of that letter?

14 MR. LENHARDT: February 1 of this year, your Honor.

15 It is entitled "Compulsory Mediation and Arbitration,"
16 and it is addressed to the WBC.

17 It says, "The failure to comply with a direct order
18 issued by the WBC and a failure to participate in good faith in
19 the mediation process as mandated by Rules 5.3 and 5.3F is a
20 direct violation of the rules and regulations. The rules and
21 regulations mandate a step-by-step process."

22 The letter goes on. He says, "The words 'compulsory'
23 and 'mandatory' have meaning. These are not voluntary
24 processes but, rather, are necessary components of the
25 progression."

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1 He goes on to say that it should be emphasized that
2 pursuant to Rules 5.1 and 5.5, these rules and regulations
3 clearly and unequivocally provide the exclusive remedies to
4 "any boxer, promoter, manager or other person or organization
5 that participated in activities or events of the WBC, or avails
6 themselves, or claims any right arising under the WBC
7 constitution or these rules and regulations."

8 He goes on to say, "The bottom line is, clearly, that
9 no party to this matter has the right or option to sidestep or
10 violate these rules and regulations."

11 Later he says, "Moreover, a failure to enforce the
12 rules and regulations sets a dangerous precedent."

13 So I would argue, your Honor, that Maskaeve and his
14 representatives have already themselves made a very strong
15 argument in favor of the alternate dispute resolution in the
16 WBC rules and regulations.

17 THE COURT: Thank you, Mr. Lenhardt.

18 Mr. Eisenstein.

19 MR. EISENSTEIN: Let me start with the last point,
20 Judge, the letter that Mr. Lenhardt has been reading from is
21 Exhibit 9 in my papers. And it is addressed specifically to a
22 blatant violation by Mr. Peter, Mr. Cohen's client, of the
23 direct order of the WBC.

24 Mr. Peter comes before you as a party which just two
25 months ago flouted Rule 5. And the WBC comes before you as a

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1 party which just two months ago permitted Mr. Peter to flout
2 its direct order to go to Rule 5 arbitration.

3 Rule 5 is an incomplete remedy because, even with the
4 court of arbitration, it doesn't have the power -- no part of
5 that remedy has the power ultimately to compel the WBC to do
6 anything. So my arguments with respect to this claim that we
7 should have been going to the alternate dispute resolution
8 process are as follows.

9 A. Both the WBC and Mr. Peter come before the Court
10 in this equitable proceeding with dirty hands, which last time
11 we looked was still an issue in an equitable proceeding.

12 B. Maskaev did appeal, and it is in Exhibit 12,
13 specifically for the relief that I am now before this Court
14 seeking, which is an extension of the negotiating period to the
15 length that the rules ordinary permit.

16 THE COURT: What exhibit is that?

17 MR. EISENSTEIN: It is 12.

18 THE COURT: The letter dated April 10?

19 MR. EISENSTEIN: No. I apologize. I picked out the
20 wrong one.

21 THE COURT: Take your time.

22 MR. EISENSTEIN: It is Exhibit 15 on the third page at
23 the bottom. Mr. Kirkorsky, who represented the same clients I
24 do --

25 THE COURT: Let me make sure this is a letter dated

SOUTHERN DISTRICT REPORTERS, P.C.

74JUMASC

1 April 13, 2007 --

2 MR. EISENSTEIN: Right.

3 THE COURT: -- addressed to Mr. Lenhardt and signed by
4 Mr. Kirkorsky?

5 MR. EISENSTEIN: Correct.

6 THE COURT: What page did you say?

7 MR. EISENSTEIN: The next to the last page at the very
8 bottom.

9 THE COURT: "Please consider this letter a formal
10 demand" --

11 MR. EISENSTEIN: -- "for an immediate extension of the
12 deadline for free negotiation."

13 So I will say to your Honor that we have not gone
14 through the other steps. There is no question about that. But
15 we made a formal appeal. We made an administrative appeal to
16 the head of the WBC for an extension. It is not the case that
17 we came into court without having sought from the organization
18 who we are now suing the relief that we are seeking from the
19 Court now. We sought it. We were turned down.

20 With respect to the question of whether we have to go
21 to Switzerland to get an ineffective remedy after Peter thumbed
22 his nose at that process and the WBC permitted him to do so, I
23 suggest to the Court that it does not lie in their mouth to
24 make that claim.

25 THE COURT: May I just ask, did Mr. Peter flout that
SOUTHERN DISTRICT REPORTERS, P.C.

74JUMASC

1 regulation, as you put it, in order to pursue some remedy in
2 court?

3 MR. EISENSTEIN: Yes. He specifically said, I reserve
4 all of my rights and you are going to be sued -- and if you
5 give me a moment I will find the letter to that effect.

6 It is Exhibit 7, a letter from Mr. Cohen's colleague,
7 Mr. Burke of Kramer Levin.

8 THE COURT: Dated January 31?

9 MR. EISENSTEIN: Correct.

10 THE COURT: All right. May I ask if this resort to
11 judicial remedy by Mr. Peter involved the issues in this case
12 or was it another bout altogether?

13 MR. EISENSTEIN: It is this. And I think that I can
14 do it in about 38 seconds.

15 The source of the problem that I'm advancing upon the
16 Court to seek help with is that the WBC gave two people the
17 right to dance with Maskhev. It gave Mr. Peter that right by
18 declaring him the No. 1 contender. It gave that same right to
19 a fighter named Vitali Klitschko in January of this year who
20 was a retired champion of the WBC. And when Klitschko
21 retired --

22 THE COURT: Was he not defeated by Mr. Peter in
23 January?

24 MR. EISENSTEIN: No. That is Toney.

25 Klitschko is a Russian fighter or a Ukrainian fighter

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74JUMASC

1 who retired in 2005 and was declared champion emeritus. And
2 the WBC said when he retired, if you ever come back to boxing,
3 you will be given the position of No. 1 contender. And that is
4 sketched out in my papers and Mr. Rappaport's affidavit. So
5 there were two competing fighters who had exactly the same
6 claim. Maskaev is the champion. Peter wants to fight him and
7 says, I am the No. 1 contender. I am the official designated.
8 Vitali Klitschko says the same thing.

9 THE COURT: Let me talk about good faith here. It
10 seems to me that the WBC did not have any control over when
11 Mr. Klitschko would want to come out of retirement.

12 MR. EISENSTEIN: True. But it had the power to
13 adjudicate when Mr. Klitschko came out of retirement and
14 presented a completing claim. It had to designate who is the
15 person. And it spent three months, January until April,
16 passing the buck, essentially. It voted -- and this is in my
17 affidavit -- for the Klitschko fight against Maskaev.

18 Then it said, well, the three of you are going to have
19 to work -- first it said, the three of you have are going to
20 have to go to Rule 5.1. And that is the direct answer to the
21 Court's question, is it the same or is it different. I think
22 it is very closely related. It is exactly why this process has
23 taken so long, because from January until April there were
24 three people trying to fit in a ring that only takes two.

25 And the body that is in charge of this, the WBC, first

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(212) 805-0300

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1 said, you all go to this dispute resolution process.

2 Peter says, I'm not doing that.

3 The WBC says, can't we all work this out, and
4 basically takes a passive role and there ensued unsuccessful
5 negotiation.

6 And I will fast forward because at a certain point,
7 Klitschko, namely, in April, this month, said -- excuse my
8 colloquialism -- I'm out of here. I don't want to play
9 anymore.

10 So at that point, April 6, Maskaev said to the WBC.
11 OK, it is no longer a three-way problem.

12 And, parenthetically, I will say that, I appreciate
13 Mr. Cohen as an advocate. I am as well. He can say that there
14 was aggravation. He can say it's all Mr. Rappaport's fault. I
15 would say it is all Mr. Peter's fault, and that would have to
16 be sorted out in some fashion.

17 But what remains as a fact is that, until April 6,
18 there were three people in a situation that only accommodated
19 two. And that was the doing of the WBC, and the WBC did not
20 step up to resolve it. And when it got resolved, my people,
21 Maskaev said, OK, we have only two people now, and the WBC
22 turned around and said, OK, you have 10 days to work this out.
23 You have 10 days to work something out which was, for the first
24 time, only Maskaev and Peter. Up to that point, there had been
25 various combinations and permutations. Mr. Peter was going to

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1 step aside. He didn't like the money that was being offered
2 for that. He wanted the money upfront. He changed his mind
3 about that. There were all kinds of back and forth.

4 You don't need to resolve those issues, your Honor,
5 because they were a function of the fact that there were three
6 people where only two can fit. And the reason to try to work
7 that out, when the governing body was not stepping in and
8 saying, look, we made a mistake, you are going to have to go
9 behind -- that's how it could have gotten resolved long ago.
10 It didn't. It got resolved only by Klitschko getting out of
11 it. So for the first time on April 9 is when the fog cleared,
12 and it was clear that Maskaev's only opponent, mandatory
13 opponent was Peter.

14 What I am saying, I wouldn't be here if we were only
15 talking about the split. The split is money. I am not
16 claiming that there is irreparable harm there.

17 What is irreparable harm is that the purse bid is set
18 for tomorrow. The purse bid means that a stranger to this
19 entire scene can come in and buy the rights to promote this
20 fight and then enter into new contracts with a site where the
21 fight will occur, a television outlet to exhibit it.

22 And if the Court were thereafter to sustain our claim
23 and to find that the purse bid was in fact put in place in
24 violation of Mr. Maskaev's right to the ordinary 30-day period,
25 the untangling of that and the rights of what I will call, for

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1 want of a better term, buyers for value without knowledge or
2 holders in due course almost of rights that go out in various
3 directions, that's the irreparable harm.

4 And I cited to the Court Judge Chin's decision in
5 M'Baye v. WBA where he addresses that kind of situation where
6 it is difficult or impossible to put the parties back in the
7 position they had before.

8 And I am suggesting to the Court that it is that kind
9 of irreparable harm that is associated with the purse bid going
10 on tomorrow. That's all I'm asking this Court for. I'm asking
11 for an opportunity that Mr. Maskaev -- Mr. Cohen says that Mr.
12 Maskaev has an obligation to the WBC. Well, the WBC has an
13 obligation to its champions as well. It has an obligation
14 under the cases I cited not to act in an arbitrary and
15 capricious fashion, not to treat him unfairly and not to
16 operate in bad faith in relation to him.

17 And I have put forward what I consider allegations --
18 they are not proven yet, they are in my papers -- that suggest
19 that they have acted in bad faith in this situation. I have
20 asked for very specific relief, which is only that he be put in
21 the position that the champion ordinarily has, and be given the
22 opportunity to negotiate.

23 I suggest to the Court that, both with respect to the
24 difficulty to disentangle issue and with respect to the other
25 branch of the obligation of a movant such as myself, which is,

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(212) 805-0300

74JUMASC

1 that I have shown sufficiently serious questions on the merits.

2 Of course, there are exceptions. The question is not
3 whether there are exceptions to the rule. We say that in our
4 papers. It is clear to me that the question is how those
5 exceptions were brought to bear and whether they were brought
6 to bear in an arbitrary and capricious way.

7 I suggest to the Court that, with those showings and
8 the fact that I am simply asking for a delay in the purse bid
9 to provide the ordinary period, that I have met the burden.

10 THE COURT: Mr. Lenhardt, would you address what I
11 understand Mr. Eisenstein to say, that the WBC abdicated its
12 responsibility when there was a three-way circus and therefore
13 created delay and the problem and actually had no role in
14 solving it, except for the fact that Mr. Klitschko on his own,
15 for whatever his reasons, decided to just walk away so that the
16 WBC took no actions in those circumstances which would then, I
17 think, put the WBC in a different footing in terms of saying,
18 now we want him to abide by the rules when we permitted others
19 not to and we didn't do our jobs ourselves.

20 MR. LENHARDT: I would be happy to address those, your
21 Honor.

22 The first thing I would like to say is that, in terms
23 of the WBC being accused of acting in an arbitrary or
24 capricious fashion, it is a bit disingenuous for the Maskaevev
25 camp to be complaining at this point because, when Vitali

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1 Klitschko announced that he was returning and, yes, he had a
2 claim based upon when he retired because the WBC president did
3 announce, if he wants to return that he will be in a mandatory
4 position.

5 We recognize that Samuel Peter has also won a final
6 eliminator and had also won a rematch as that final eliminator
7 and, therefore, Mr. Cohen was arguing that Mr. Peter had the
8 right to proceed and the WBC did not have the right under their
9 rules and regulations, although there are specific provisions
10 that discussed the return of a fighter and the circumstances
11 for us to rule that that person is eligible to fight.

12 Mr. Maskaev's representatives said that they wanted to
13 fight Klitschko. They were the ones encouraging and playing an
14 active role in the process. So rather than saying no,
15 Mr. Peter had won a final eliminator and a rematch as a final
16 eliminator, quite the contrary, they were interested in
17 fighting Mr. Klitschko because you had two Eastern bloc
18 fighters.

19 There was discussion about having the bout in
20 Moscow -- a very, very lucrative fight and a lot of discussion
21 about paying a step aside fee, which sort of is not customary
22 in boxing or some people might say it is not a step aside fee
23 because they feel that the Maskaev people will not necessarily
24 feel that Mr. Peter had an indisputable right to fight before
25 Mr. Klitschko did.

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(212) 805-0300

74JUMASC

1 So, yes, we had two different parties that were both
2 claiming the right to fight first against Mr. Maskaev. The WBC
3 believed that it was not in a position to make a decision and
4 that its rules and regulations provided for, first, a
5 compulsory mediation and then a mandatory and binding
6 arbitration. And we felt that it was a way, considering that
7 people might argue that we were acting in an arbitrary and
8 capricious fashion, instead to let an independent, third party
9 make that decision. So the WBC feels that it was completely
10 justified in referring all the parties to that process.

11 As far as whether or not we demanded that the Peter
12 camp follow the alternate dispute regulations from the WBC, we
13 demanded that consistently. When Kramer Levin became involved,
14 we consistently said to Mr. Peter and his representatives at
15 Kramer Levin that we believed that the appropriate venue for
16 the hearing and the resolution of their dispute with the WBC
17 was also to hold a court of arbitration for sport in
18 Switzerland.

19 So I would make the same argument that we made with
20 the Samuel Peter people, which is that we have a network that
21 provides for an independent venue and arbitration to resolve
22 this in a way that doesn't involve the New York courts which we
23 don't feel have a particular jurisdiction here.

24 And, again, we just didn't want to be disingenuous
25 that the Maskaev camp, which was on the WBC side, if you will,

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(212) 805-0300

74JUMASC

1 in terms of letting Klitschko have his day in court, if you
2 will, in Switzerland and is now taking a different tact and,
3 again, we did not operate in an arbitrary and capricious
4 fashion in trying to help resolve the dispute in an amicable
5 way.

6 THE COURT: I just have a few questions for you, Mr.
7 Lenhardt.

8 Have there been other champions that have retired and
9 decided to come back into the ring?

10 MR. LENHARDT: Yes, your Honor, there have, and it's
11 almost universal.

12 THE COURT: My question is, were other people already
13 appointed, if you will, to fight the champion at the time that
14 that happened?

15 MR. LENHARDT: I cannot point to a specific
16 circumstance. I have not researched the point other than to
17 say that we certainly can do that, but the history of champions
18 coming back and receiving title shots, everyone from Joe Louis
19 and people of that great stature having the opportunity to
20 return to the ring after announcing retirement -- Sugar Ray
21 Leonard is a good example. He came back and fought against
22 Marvin Hagler. So there are many situations in which former
23 champions return and are given a title shot in a way that is
24 comparable with what we are talking about with the Klitschko
25 situation.

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(212) 805-0300

74JUMASC

1 THE COURT: But my question is, at the time that they
2 announced that they were coming out of retirement, had the WBC
3 already anointed the next person to fight the champion?

4 MR. LENHARDT: I cannot point you to a specific
5 example, your Honor. But one point I can make is that the WBC
6 recently in the last three, four or five years has been
7 mandating its rules and regulations. And when the Moscow
8 convention was over, in the fall of 2003 or December 2003, the
9 WBC added a rule that provided for a champion emeritus status,
10 which is a designation for a former champion that provides him
11 upon retirement -- and because Klitschko is one of a handful of
12 former champions who were given that designation and a great
13 portion of his claim to be able to return and receive an
14 immediate title shot was based upon his designation as a WBC
15 emeritus champion, of which I think there are maybe three or
16 four to date.

17 THE COURT: That's fine. I don't really care if you
18 go beyond that three-year period before you put in that right
19 to come back as a champion. My real point is, how did you
20 handle this in the past when you had already told A that he
21 would be the next person to fight the champion, and then a
22 retired champion came out and insisted on his right? How was
23 this handled in the past?

24 MR. LENHARDT: Your Honor, I have been serving in my
25 pro bono, voluntary role as WBC general counsel for probably

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(212) 805-0300

74JUMASC

1 about two, two and a half years. So, unfortunately, I cannot
2 speak from personal experience to your question.

3 THE COURT: You understand why I am asking it, though?

4 MR. LENHARDT: Of course. I will say that we recently
5 in Spain in 2005 enacted a new provision for the WBC rules and
6 regulations that clarified what would happen in a specific
7 circumstance such as this.

8 What the rule says is that, upon the return of a
9 former champion, if there is a contender who is a mandatory
10 champion at the time, that the WBC has the right to permit this
11 new contender to come in, in the case of unification bout which
12 is typically very important in the sport, that the mandatory
13 contender has to wait until that bout occurs, that is Rule
14 1.21B(10). It says, "Under extreme special circumstances such
15 as a unification bout or a proposed bout with a legendary boxer
16 that could result in great promotion, prestige and importance
17 for the sport of boxing, the WBC may sanction such bout as a
18 mandatory bout. If a mandatory challenger had already been
19 appointed by the WBC, the winner of the special bout would then
20 face the mandatory challenger without an intervening contest."

21 So this rule was enacted in November or December of
22 2005. So the rules that we follow in these circumstances is of
23 very recent vintage.

24 THE COURT: Does that mean that it is invalid?

25 MR. LENHARDT: No, quite the contrary. In fact what I

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(212) 805-0300

74JUMASC

1 am saying, your Honor, is that the appeal in this circumstance,
2 was based upon a rule that very recently was enacted by the
3 WBC. So to the extent that you are asking what the WBC did
4 under similar circumstances in the past, I do not have a
5 specific circumstance that I can point to since it predated my
6 involvement with the organization, but I can tell you that the
7 rule that is applicable did not exist previously and,
8 therefore, your Honor's request for specific circumstances,
9 that would have been when the rules were different.

10 THE COURT: I would have taken custom and practice
11 without a rule before 2005, but since there is some rule in
12 2005, why wasn't it applied here?

13 MR. LENHARDT: What the rule permits is for the WBC to
14 make a ruling in the discretion of its board of governors to
15 permit such a challenger who is returning such as Vitali
16 Klitschko to have that bout, in which case Mr. Peter would have
17 had to wait until the Maskaev/Klitschko bout had occurred.

18 The WBC did not make a ruling in that circumstance
19 because Mr. Klitschko was not only claiming that the WBC should
20 appoint him as the immediate challenger, but that we had no
21 choice but to do otherwise. He was arguing that his champion
22 emeritus status and that certain promises that he claims were
23 made to him by the WBC meant that we had to appoint him as the
24 immediate mandatory challenger over Mr. Peter.

25 Obviously, Kramer Levin and other representatives of
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74JUMASC

1 Mr. Peter argued that their boxer, having paid the sanction
2 fees had the right, if not only the negotiation but the
3 discretion to appoint him, but he had the right.

4 The reason that the WBC did not choose one or the
5 other is that both were claiming the right and demanding the
6 right to first fight Mr. Maskaev, and therefore we felt that
7 the appropriate venue for the resolution of that was the court
8 of arbitration for sport in our rulings and regulations.

9 THE COURT: But I don't understand it, since you have
10 the discretion to do it, and the fact they both demanded it.

11 Now, of course, if I wanted something very badly, I am
12 not going to go in and say I think I should get it. I would go
13 in and I would say, this is mine, and I will fight you if you
14 don't give it to me. So the fact that the two of them, both of
15 them claimed a right, apparently was not based on the two of
16 them being there simultaneously, but in the ordinary course.
17 If there had been no one in Mr. Peter's position, Mr. Klitschko
18 would get it. If there had been no one in Mr. Klitschko's
19 position, Mr. Peter would get it. So they did have incidental
20 rights, but I don't see why that is a reason to abdicate your
21 authority and ability or discretion, however you want to look
22 at it, to make a decision and get this thing moving way before
23 it turns up here.

24 MR. LENHARDT: I understand your Honor's comments.
25 Obviously, we took a different view. Given the several

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(212) 805-0300

74JUMASC

1 accounts as well as other things, the parties were claiming
2 that we were acting with some bias. The best way was to not
3 take a view which one or the other would say that they were
4 damaged and aggrieved and, frankly, say if Mr. Peter had lost
5 and we had appointed Mr. Klitschko as the challenger, I have a
6 feeling that Mr. Cohen would be at your court asking for a
7 temporary restraining order to prevent that bout from occurring
8 as well.

9 Having said all of that, we believe that now that the
10 parties have agreed that Mr Klitschko will take the second
11 mandatory position and Mr. Peter, the first, the WBC felt that,
12 since this had been going on since January with all of the
13 parties talking, the best way was to work up a purse offer as
14 soon as possible. And I think that we heard the orders were
15 coming out somewhere around the 6th of this month and the offer
16 for the 20th. We felt that, given the fact that the parties
17 had been in discussion for so long, that a shortened period
18 would have been appropriate, to the extent that the Maskaev
19 camp is complaining that there had been a delay. Now that
20 dispute has been resolved, the WBC believes that the purse
21 offer sooner rather than later is the best way to proceed and
22 to let Mr. Maskaev, because of his championship, in the ring,
23 as well as Mr. Peter.

24 So, again, we think that this is something that would
25 advance the cause of getting this resolved. I am saying the

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(212) 805-0300

74JUMASC

1 fact that Mr. Peter's representatives were in your court
2 initially contesting this shows that the free negotiation
3 period under the WBC rules and regulations which was intended
4 to give the parties the opportunity to come to a mutually
5 beneficial agreement, apparently it is not going to work and,
6 therefore, the purse offer process which permits promoters to
7 bid and whoever made the highest bid wins, the boxers maximize
8 their purse. This was intended to be fair to all parties, and
9 we believe that it is appropriate to move forward.

10 May I also say that, had Mr. Maskaev's people brought
11 a claim in a court of arbitration for sport, and the court of
12 arbitration had ordered the WBC not to proceed with a purse
13 offer, of course we would have respected that as well.

14 THE COURT: Nobody is purer than the driven snow here.
15 Everybody is coming in with slightly soiled hands.

16 This is a court of equity. It seems to me that if
17 Mr. Maskaev was not completely and solely the obstruction for
18 the last several months, that it is sort of unseemly to
19 penalize him by shortening the period and giving the 55/45
20 split.

21 It seems to me that you, the WBC, could have resolved
22 this. You chose not to and you didn't and if you are just as
23 responsible for the delay from January as either Mr. Maskaev or
24 Rappaport Productions or even Mr. Peter. So it seems to me
25 that if you wanted to look good and nobody thinking that you

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1 were taking one side or the other having bias, what you could
2 have done here is to use the ordinary course, have the normal
3 30 days with up to but not necessarily 15 days and then, if it
4 didn't work out, then you had the right to put the purse up for
5 a bid. It is like you are angry because the negotiations took
6 longer because you didn't do what you could do. I just don't
7 understand that.

8 MR. COHEN: Judge, could I respond?

9 THE COURT: Sure.

10 MR. COHEN: The notion that Mr. Maskaev is somehow
11 being penalized sort of flies in the face of the whole history.
12 And I understand your Honor doesn't have the entire background.
13 But to say that their camp was obstructionist in terms of
14 getting a deal done is to put it mildly.

15 There is one aggrieved party here, and that is Samuel
16 Peter. He earned the right to fight months and months ago.
17 Mr. Maskaev and Mr. Klitschko did what they could to try to
18 thwart that right.

19 It is sort of funny thinking about the whole process
20 to suggest that the WBC is somehow biased in Mr. Peter's favor
21 and is giving him a special first bid out of some bias when it
22 is clearly inconsistent with everything that has gone on with
23 the WBC --

24 THE COURT: I didn't say it was biased against
25 Mr. Peter. What I was saying is that it said it didn't want to

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(212) 805-0300

74JUMASC

1 make a decision so that it wouldn't appear as if it was biased.
2 What I am saying is, because it didn't act, to all of a sudden
3 change the rules on Mr. Maskaev does seem unseemly.

4 MR. COHEN: It wasn't changing the rules.

5 I would add too, the notion that on April 6 it became
6 clear that Maskaev/Peter was going to happen, it is just not
7 true.

8 First of all, Samuel Peter won his second elimination
9 bout against James Toney January 6, 2007. The very next day,
10 the promoters for Samuel Peter reached out to Dennis Rappaport.
11 Let's start negotiating. This was before Klitschko had said, I
12 want to come back. Rappaport didn't respond, didn't want any
13 part of negotiations then. He wanted to wait and see if he
14 could do a better deal, see if he could find a way around
15 fighting Mr. Peter.

16 Again, our understanding is that, since April 6 or
17 April 9 -- I should say April 6, when it became clear that
18 Maskaev/Peter was the next fight, they have done virtually
19 nothing to negotiate. Promoters for Mr. Peter tried to
20 negotiate with Mr. Rappaport. They have done nothing. So the
21 notion that another couple of weeks is going to change
22 something that is, frankly, inconsistent with their actions.

23 I would also like to address the unclean hands point
24 because I think it is an important one, and I am glad that
25 Mr. Eisenstein has attached Exhibit 7 to his submission which

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(212) 805-0300

74JUMASC

1 is his letter from my colleague Barry Berke. In that letter he
2 explains why we didn't think the mandatory provisions of Rule 5
3 of the WBC rules didn't apply, and that even though Mr.
4 Klitschko had retired -- the WBC, as I believe as your Honor
5 has recognized, the WBC had not made a decision at that point
6 and the WBC mandatory arbitration rules say, anyone who wants
7 to challenge a WBC decision must go to arbitration. So we took
8 the decision to arbitration, and we don't need to seek an
9 advisory opinion.

10 We also had at that point claimed what we believed
11 sounded in contract against WBC, not a claim under the WBC --

12 THE COURT: Slow down and speak up.

13 MR. COHEN: Sorry, you Honor.

14 We had made a claim, and believe we still do, subject
15 to what happens as a result of the current state of play, but a
16 contract claim against the WBC where they promised Mr. Peter
17 that if he won the second fight he would be the next to fight
18 Maskaevev, and that was separate and apart from the WBC rules.
19 So it was a contract claim, not a claim under the WBC rules
20 and, therefore, we believed it was at least arguable that it
21 didn't belong in arbitration, that we would have a right to
22 come into court.

23 That said, my adversary has talked about Peter
24 resorting to a judicial remedy rather than arbitration, and
25 your Honor asked about that. In fact, there has never been any

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

74JUMASC

1 resort to judicial remedy as of yet. Mr. Peter has never filed
2 an action, whether in arbitration or the court. So there
3 hasn't been judicial remedy. As it is clear, it certainly was
4 an arrow in the quiver that we had at the time that the dispute
5 first arose. The notion that we come in with any kind of
6 unclean hands is flatly belied by the positions staked out in
7 the various exhibits attached.

8 Also, I think the notion that somehow after the purse
9 bid it is not just about money because, after the purse bid,
10 there were contracts that you would have to disentangle, it is
11 still a money issue. You are still talking about something
12 that could be compensated in money damages if they were somehow
13 to prevail on these theories that seemed to be barred under WBC
14 rules.

15 The case that is cited in their papers has nothing to
16 do with post purse bid contracts, couldn't find irreparable
17 harm from that. What it found was the potential for
18 irreparable harm if a fighter was skipped over for the
19 opportunity to fight for a championship. That is not what is
20 happening here.

21 This is about a championship fight. There is no doubt
22 that Mr. Maskaev, regardless as to what happens with the purse
23 bid, is fighting to retain his championship. There is no doubt
24 that Mr. Peter will be fighting for that championship. So it
25 just doesn't apply. It is a different set of circumstances and

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1 a different set of concerns as far as the irreparable harm
2 goes.

3 So to come back, the equities, the submission from the
4 Maskaev camp flies in the face of everything that has happened
5 since January 6, and Samuel Peter, once again, had earned the
6 right to fight Mr. Maskaev.

7 There have been statements from people in the Maskaev
8 camp, including Dennis Rappaport that have turned out to be
9 flatly untrue. As your Honor has heard, there was an attempt
10 to negotiate a step aside where Samuel Peter would say, you
11 know what, we are not going to arbitrate. We are not going to
12 litigate. We are not going to pursue this, provided that you
13 guys pay us a certain amount of money, which is an amount that
14 they came up with. They offered it to us.

15 We said, yeah, let's explore that. Let's walk down
16 that road. There were promises made, amounts of money that
17 they were going to pay us, and every time it came time to pony
18 up that money, there was another reason. We don't have it yet.

19 They sent us what purported to be a wire transfer from
20 Russia showing that they had money in their account that they
21 were going to give to us. Well, guess what? There was no
22 money there. Never happened.

23 So at every turn, the Maskaev camp -- putting aside
24 our right to fight, Mr. Peter's right to fight for the
25 championship, putting all of that aside, they even thwarted the

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1 very agreement that would have given them what they wanted,
2 which was a fight against Klitschko somewhere overseas. And
3 that was something that happened for a long time. So the
4 notion that somehow they come in with clean or at least cleaner
5 hands is belied by what actually happened.

6 And Mr. Eisenstein has only recently come on to the
7 case, but that's how we got to where we are today. We could
8 have had an agreement months ago. As I said to your Honor,
9 essentially, at the eleventh hour, much like this filing at the
10 eleventh hour, they walked away from a four-party deal with the
11 WBC, with Klitschko, with us. Just walked away. So that's
12 where we are.

13 Again, the notion of unclean hands and our refusal to
14 arbitrate, there were valid, legal reasons why we didn't think
15 arbitration applied.

16 THE COURT: My comment about refusing to participate
17 in arbitration was not against you or Mr. Peter. It was that
18 the WBC seemed to be OK with that, and that's all. I see
19 bending the rules there, as you say you didn't actually file
20 suit but you explained to them that we are not going to do it
21 your way and they didn't seem to take any action there.

22 MR. COHEN: I am not sure that is true, your Honor.
23 The WBC, without question, wanted us to arbitrate, wanted us to
24 mediate. They directed us to do so, but we refused to
25 participate for the reasons that I explained.

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1 And Mr. Lenhardt can correct me if I am wrong, but
2 they clearly, to my mind, wanted this to head in that
3 direction. What happened was, we said, in the utmost good
4 faith, we don't believe arbitration is necessary. We don't
5 believe mediation is necessary, but we are willing to meet with
6 you and discuss a way out of this.

7 So there was an extraordinary meeting in February in
8 New York with all of the parties -- the president of the WBC
9 was there, the promoters for the parties, the managers for the
10 parties, prior counsel for Mr. Maskaev was there. That's where
11 the process began, the negotiations that ultimately they walked
12 away from, walking away essentially from their own offer.

13 So there was a process. We didn't say, we are not
14 arbitrating, we are not mediating and we rushed to court. We
15 said, let's mediate. We are not going to call it mediation --
16 not let's mediate, but let's have a meeting and see if we can
17 negotiate something. And that was done, good faith, on our
18 end.

19 We thought we had a deal. We thought we had a step
20 aside. And in the end, because of the Maskaev camp, in large
21 part, if not entirely, it was never able to happen.

22 THE COURT: Let me ask Mr. Eisenstein a question.

23 Assuming that the auction goes forward or the purse
24 bid goes forward tomorrow, how does that change the position of
25 Mr. Maskaev and Mr. Rappaport in terms of the actual fight?

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1 They don't have any control over it? They will not be able to
2 select anything?

3 MR. EISENSTEIN: They won't be able to select --
4 basically what will happen is that the promotional rights,
5 which is a bundle of rights including where it goes, who
6 televises it, what happens with the ancillary stuff like
7 T-shirts and concessions and all of the various rights that are
8 in that bundle go to somebody else for a package price, and
9 that somebody else then controls them entirely and has the
10 ability to deal them off to another layer of third parties who
11 are then in contract with the holder of the promotional rights
12 and can say, hey, I made a deal. I paid value for the rights
13 to do this.

14 And so that's what I am describing as an array of
15 rights which necessarily happens over the next several months
16 as preparations for the fight go forward. But the fundamental
17 thing that gets dealt off is the right to control everything
18 about the fight.

19 THE COURT: Let me ask you this. Assume that the
20 negotiations had gone well, would Mr. Maskaev and Mr. Rappaport
21 have that right? Would they be the ones who are calling the
22 shots?

23 MR. EISENSTEIN: Let me, with due respect to Mr. Cohen
24 say that, during this very period, since April 6 there was a
25 meeting between Dino Duva, who is in Mr. Peter's promotional

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1 camp and Mr. Rappaport, and Mr. Duva said, I am going to make
2 an offer but he never did.

3 THE COURT: Didn't make an offer?

4 MR. EISENSTEIN: Make an offer to the other that this
5 promoter, one of the promoters involved in the very fight will
6 take on that position of being the promoter for the fight and
7 so will therefore have the control or there will be joint
8 control -- there are a variety of ways that that can be done.

9 There are two promotional entities. One that is tied
10 to Peter, one that is tied to Maskhev. Each of them could say,
11 I will be the promoter, and I will pay you a --

12 THE COURT: Mr. Lenhardt, are you still there?

13 MR. LENHARDT: Yes. I'm sorry, your Honor.

14 MR. EISENSTEIN: The other way that it can be done is
15 cooperatively, they agree to co-promote it. They have joint
16 control over it.

17 But the aspect of the control -- and I think that I am
18 talking too long -- the answer to your question is, purse bid
19 they lose control entirely. Negotiation, there is at least the
20 possibility of joint or agreed to control by one or the other
21 in some permutation.

22 MR. COHEN: Can I comment on that?

23 THE COURT: So what the parties, Mr. Peter and Mr.
24 Maskhev would lose is the ability to have any control over it?
25 Is Mr. Peter able to work with someone else and cut out the

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1 possibility of working with Mr. Maskaev?

2 MR. COHEN: That is the fallacy here. What Mr.
3 Eisenstein has left unsaid is that Dennis Rappaport is free to
4 make a bid. He can go to the purse bid tomorrow and put in a
5 bid to control the promotional rights to the fight. That's
6 what our clients are intending to do and that's what happens in
7 the normal course.

8 As far as this notion of losing control of the bundle
9 of rights that go with promoting a fight, that happens
10 regardless of when the purse bid takes place, and nothing is
11 stopping Mr. Rappaport from participating in the purse bid.

12 I would also add, it is not as if anyone could walk in
13 off the street and make an offer and suddenly you have lost all
14 your rights to some unknown factor. I couldn't walk in and
15 say, I will pay a million dollars for this fight. You have to
16 be a registered promoter. You have to be in a position to put
17 up 10 percent of your offer on the spot, I believe, if not
18 shortly thereafter.

19 So Mr. Rappaport hasn't lost control of anything. In
20 fact, my understanding is that, more often than not, fights go
21 to purse bid. As a veteran promoter, Mr. Rappaport knows the
22 process well and has undoubtedly bid and undoubtedly won many
23 bids and is not being deprived of the right to put in a bid.

24 MR. EISENSTEIN: Nor are the promoters, including Don
25 King on Mr. Peter's side, but that doesn't mean that they are

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1 going to win it. That means that they are going to put in a
2 sealed bid and hope that that bid is competitive with a
3 promoter from Russia, a total stranger to the transaction who
4 decides he wants to bid. That is the loss of control.

5 Yes, of course, everybody can go in and, indeed, you
6 can go in and register tomorrow and suddenly become a
7 registered promoter. But because it is a sealed bid process
8 instead of a negotiation process where people are exploring,
9 will you do this or I'll do that, it is a different -- it
10 carries different risks with it.

11 THE COURT: Let me ask this. Is there a floor for
12 these sealed bids?

13 MR. COHEN: My understanding, your Honor, there is not
14 a floor per se, but if the WBC determined that the bids are too
15 low, then it can extend the period for the purse offers and
16 seek additional bids.

17 THE COURT: There is no minimum, say, it must be at
18 least a million dollars?

19 MR. EISENSTEIN: No. There is no knock-down or
20 whatever that thing is called at an art auction where it is
21 withdrawn if it is below that amount. The only thing is, as
22 Mr. Cohen says, they can extend the process for 15 days,
23 seeking additional sealed bids.

24 MR. COHEN: Ultimately, Judge, it is market driven, so
25 the bid in that sense is what they are capable of delivering.

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1 There is only so much money that you can get from a venue or
2 from a TV contract, I should say, and so the market tends to
3 dictate, if not in every situation then in just about every
4 situation what the bids are going to be.

5 So, again, I think it underscores, there is no
6 downside. His concern that Mr. Rappaport doesn't know what a
7 bid is going to be from some third promoter who might outbid
8 him, all that means is that there is more money going into the
9 fighter's pocket. If some promoter comes in and offers \$4
10 million and Mr. Rappaport was only offering 3, that's a
11 win-win. Everybody has the extra million. Some of that
12 inevitably gets to the promoters. So, again, it is hard to see
13 what the harm is here.

14 THE COURT: I just have an additional question.

15 Who is the promoter for Mr. Peter?

16 MR. COHEN: Duva Boxing.

17 THE COURT: Who is that?

18 MR. COHEN: It is a company out in New Jersey headed
19 by Dino Duva, comes from the Duva family which has a long
20 lineage in the boxing industry.

21 THE COURT: So it is Duva v. Mr. Rappaport, is that
22 it?

23 MR. EISENSTEIN: It is actually, Duva and Don King.
24 Don King owns one-half of Duva Productions.

25 THE COURT: So it is that entity?

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1 MR. COHEN: Duva Boxing.

2 THE COURT: Versus Rappaport Productions?

3 MR. EISENSTEIN: Right.

4 THE COURT: I don't use the term "versus" in sort of
5 an adversarial way. If they were to agree, what is it that
6 they would be agreeing on?

7 MR. EISENSTEIN: How much each of the fighters would
8 get in the way of purses and where the fight would occur, what
9 date and television outlet, HBO, Showtime would present the
10 fight, what the international distribution of the fight would
11 be, what the -- I am blocking the word -- the showing it later
12 rights are, which is a whole separate market.

13 THE COURT: Rerun?

14 MR. EISENSTEIN: Rerun type of rights.

15 In addition to everything that goes on at the venue,
16 those are the things that they would be agreeing or could agree
17 on.

18 THE COURT: Who would be putting up the money?

19 MR. EISENSTEIN: A lot of the money comes from
20 television. A lot of the money comes from the site. And many
21 of these things, although Mr. Cohen is right that it is market
22 driven, it is a funny market because there is a moment in time
23 where there is a television date and HBO is prepared to pay X
24 because they don't have anything else then. If that doesn't
25 happen then and their dance card is full for three, four months

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1 thereafter, then HBO isn't interested and suddenly there is no
2 competition between HBO and Showtime. I guess that is market
3 driven, but it is serendipitous.

4 MR. COHEN: He is exactly right. There is a moment in
5 time already during this process since Samuel Peter won the
6 first eliminator, since he won the second eliminator and those
7 moments have been disappearing. We now have the opportunity to
8 have a purse bid tomorrow. If we extend it another couple of
9 weeks, more is going -- the dates are going, the venues are
10 going.

11 If you look at the hardships, if you even get there --
12 which we don't think you do -- the balance of hardships, they
13 tilt in favor of getting this purse bid done as soon as
14 possible. The process has just gone on too long at this point.
15 Mr. Peter has been harmed enormously.

16 THE COURT: I hear what you are saying, but I guess my
17 point is that, if I understand what I have been told, if it
18 goes to purse bid then -- and I am using these terms very
19 grossly -- Mr. Maskaev and Mr. Peter becomes the puppets of
20 someone else who calls all the shots, who tells them this is
21 what you are doing, this is where it is going to be, this is
22 all of this, this is all of that, whereas, if they actually
23 agree, then they are the ones who set that up and then what?
24 Get money from television and things like that? So they are
25 either going to have to come to an agreement and do it together

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1 or they are going to lose the control that seems to be so
2 precious. Is that correct?

3 MR. COHEN: It is correct that somebody else will be
4 part of the process, but I think there's a sense that this is
5 somehow extraordinary. This is how the business works. Purse
6 bids are common. It is an entire section of WBC rules devoted
7 to purse bid.

8 THE COURT: I understand that purse bids are common.
9 My problem is that the timing here is a little extraordinary,
10 in other words, the 10 days and then the 11th day and the purse
11 bid takes place is not necessarily the way it looks like it is
12 going to happen in these rules.

13 MR. COHEN: My understanding is that it is not
14 extraordinary to have a shortened time period, No. 1, and that
15 is if there is only one item on the list. I just don't think
16 it is that extraordinary that the time is shortened, nor is it
17 extraordinary to go to purse bid. It happens all the time.

18 THE COURT: I don't have a problem with purse bid; it
19 is with the timing of the purse bid that I have a problem.

20 MR. COHEN: I can't help but come back to the long
21 history of this, that Samuel Peter -- all Samuel Peter did was
22 everything that everybody asked him to do. He fought the
23 fights he was supposed to. He paid the fees he was supposed to
24 pay. He won the fights that he fought. He contacted the
25 Maskaeve camp the day after he won his elimination bout and they

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1 ignored him.

2 So under these circumstance to say 10 days, it is not
3 extraordinary. They are looking for two more weeks apparently,
4 which is just another 10 business days. As I say, our
5 understanding is that promoters on their side have essentially
6 ignored the overtures from the Peter camp, haven't negotiated
7 in good faith. There is nothing to indicate that an additional
8 two weeks puts them in any better position to negotiate in good
9 faith, which they haven't done until now.

10 THE COURT: Let me take a break, and I will come back
11 and we may resolve this or talk a little further.

12 Counsel, while I am in the process of deliberating on
13 this, I did want to put out a suggestion for you to be mulling
14 over as well. What would happen if the defendants agreed to a
15 10-day adjournment in return for the plaintiffs agreeing to a
16 45/55 split?

17 Think about it.

18 If you want to pick up the phone and talk to Mr.
19 Lenhardt, don't hesitate.

20 MR. LENHARDT: Thank you. I did hear the extension,
21 but it faded in and out.

22 THE COURT: The other part was that, in exchange for
23 that, the plaintiff would agree to the 45/55 split.

24 (Recess)

25 THE COURT: A couple of thoughts here which may be

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1 translated into findings, actually.

2 The administrative exclusivity under Section 5.1
3 through 5 of the rules might, in the first instance, be
4 impressive as a basis for the Court not getting involved,
5 however, when the WBC doesn't apply its own rules, that is, the
6 new rule in 2005 that could have solved this problem a long
7 time ago, it seems to me that it is unfair to insist that the
8 plaintiff follow the rules of being precluded from coming into
9 court.

10 Next, it seems to me that this has been going on at
11 least since January. It is not clear to me why there hasn't
12 been an agreement. It seems to me that Mr. Maskaev could have
13 been negotiating with Mr. Peter because he knew at some point
14 it was going to happen, and I don't know how soon after Mr.
15 Peter looked like he was going to be the contender that
16 Mr. Klitschko decided that he wanted to come back in. I assume
17 that Mr. Peter was notified by the WBC first because otherwise
18 you wouldn't have created a problem, or at least I don't think
19 you would have, of having a retired champion returning and then
20 naming somebody else.

21 So it seems to me, taking it at face value, that
22 Mr. Peter has been making overtures to Mr. Maskaev and
23 Mr. Rappaport. I understand Mr. Eisenstein's argument about
24 control, but when you come right down to it, it is control
25 actually over money, the ability to determine the site, who

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1 gets the various contracts. Yes, it is control, and it would
2 be good control if it could be kept between Mr. Maskaev's team
3 and Mr. Peter's team.

4 However, it just seems to me that I don't see this as
5 any irreparable injury to the plaintiff at this point. So it
6 doesn't seem to me that there is any basis, because in all
7 probability it would not be successful on the merits either, as
8 I said, considering how everybody here has a reason to be
9 wearing sunglasses in court. So it seems to me that the
10 appropriate thing to do here is to deny the TRO, and that is
11 what I am doing. So I am denying the plaintiffs' request for a
12 TRO.

13 I am ordering this record on a daily basis, and please
14 see Ann. I am splitting the cost of it between the parties.

15 Have a good day.

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